

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JESSE ROSEN,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION, PRISON
HEALTH SERVICES, INC., MARTIN F. HORN,
Commissioner of the New York City Department of
Correction, CORRECTION OFFICER DENNIS HLATKY
and CAPTAIN YVETTE BALLARD, and JOHN DOE,
M.D., said name being fictitious, being intended to
Designate the physician involved in the action herein,

Defendants.

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**ANSWER TO AMENDED
COMPLAINT**

Jury Trial Demanded

07 Civ. 6018 (VM)(THK)

THE CITY OF NEW YORK, NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION, PRISON HEALTH SERVICES, INC., MARTIN F. HORN, CORRECTION
OFFICER DENNIS, and JOHN DOE, M.D., by their attorney, Michael A. Cardozo, Corporation
Counsel of the City of New York, for their answer to the amended complaint, respectfully allege,
upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint, except admit plaintiff purports to bring this action as stated therein.
2. Deny the allegations set forth in paragraph "2" of the complaint, except admit plaintiff purports to invoke the jurisdiction of the Court as stated therein.
3. Deny the allegations set forth in paragraph "3" of the complaint, except admit plaintiff purports to base venue as stated therein.

4. Deny the allegations set forth in paragraph "4" of the complaint, except admit a purported Notice of Claim was served on or about September 12, 2006.

5. Deny the allegations set forth in paragraph "5" of the complaint, except admit the purported Notice of Claim was in writing.

6. Deny the allegations set forth in paragraph "6" of the complaint, except admit the purported Notice of Claim included plaintiff's name and allegations of an incident and damages stemming therefrom.

7. Deny the allegations set forth in paragraph "7" of the complaint.

8. Admit the allegations set forth in paragraph "8" of the complaint.

9. Admit the allegations set forth in paragraph "9" of the complaint.

10. Admit the allegations set forth in paragraph "10" of the complaint.

11. Deny the allegations set forth in paragraph "11" of the complaint, except admit no payment or adjustment has been made to plaintiff.

12. Deny the allegations set forth in paragraph "12" of the complaint, except admit this action was commenced on June 26, 2007.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the complaint.

14. Admit the allegations set forth in paragraph "14" of the complaint.

15. Deny the allegations set forth in paragraph "15" of the complaint, except admit the City of New York maintains the Department of Correction and respectfully refer the Court to the New York City Charter and the Administrative Code for a recitation of the relationship between defendant City of New York and the New York City Department of Correction.

16. Deny the allegations set forth in paragraph "16" of the complaint, except admit that GMDC is a New York City Department of Correction facility.

17. Admit the allegations set forth in paragraph "17" of the complaint.

18. Admit the allegations set forth in paragraph "18" of the complaint.

19. Deny the allegations set forth in paragraph "19" of the complaint.

20. Admit the allegations set forth in paragraph "20" of the complaint.

21. Deny the allegations set forth in paragraph "21" of the complaint, except admit Martin Horn is the commissioner of the New York City Department of Correction.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. Admit the allegations set forth in paragraph "23" of the complaint.

24. Admit the allegations set forth in paragraph "24" of the complaint.

25. Admit the allegations set forth in paragraph "25" of the complaint.

26. Admit the allegations set forth in paragraph "26" of the complaint.

27. The allegations set forth in paragraph "27" of the complaint consist of conclusions of law rather than averments of fact and therefore no response is required.

28. The allegations set forth in paragraph "27" of the complaint consist of conclusions of law rather than averments of fact and therefore no response is required.

29. Deny the allegations set forth in paragraph "29" of the complaint.

30. Deny the allegations set forth in paragraph "30" of the complaint, except admit that a contract related to medical care exists between the City of New York and PHS.

31. Deny the allegations set forth in paragraph "31" of the complaint.

32. Deny the allegations set forth in paragraph "32" of the complaint.

33. Deny the allegations set forth in paragraph "33" of the complaint.

34. Deny the allegations set forth in paragraph "34" of the complaint.

35. Deny the allegations set forth in paragraph "35" of the complaint.

36. Deny the allegations set forth in paragraph "36" of the complaint.

37. Deny the allegations set forth in paragraph "37" of the complaint and respectfully refer all questions of law to the Court.

38. Deny the allegations set forth in paragraph "38" of the complaint.

39. Deny the allegations set forth in paragraph "39" of the complaint, except admit DOC officers were on duty on June 26, 2007.

40. Admit the allegations set forth in paragraph "40" of the complaint.

41. Deny the allegations set forth in paragraph "41" of the complaint.

42. Deny the allegations set forth in paragraph "42" of the complaint.

43. Deny the allegations set forth in paragraph "43" of the complaint.

44. Deny the allegations set forth in paragraph "44" of the complaint.

45. Deny the allegations set forth in paragraph "45" of the complaint.

46. Deny the allegations set forth in paragraph "46" of the complaint, except admit plaintiff was taken to a medical clinic.

47. Deny the allegations set forth in paragraph "47" of the complaint, except admit plaintiff was examined and treated at a medical clinic on Rikers Island.

48. Deny the allegations set forth in paragraph "48" of the complaint.

49. Deny the allegations set forth in paragraph "49" of the complaint.

50. Deny the allegations set forth in paragraph "50" of the complaint.

51. Deny the allegations set forth in paragraph "51" of the complaint.

52. Deny the allegations set forth in paragraph "52" of the complaint.

53. In response to the allegations set forth in paragraph “53” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through “52” inclusive of this answer, as if fully set forth herein.

54. Deny the allegations set forth in paragraph "54" of the complaint.

55. Deny the allegations set forth in paragraph "55" of the complaint.

56. Deny the allegations set forth in paragraph "56" of the complaint.

57. In response to the allegations set forth in paragraph “57” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through “56” inclusive of this answer, as if fully set forth herein.

58. Deny the allegations set forth in paragraph "58" of the complaint.

59. Deny the allegations set forth in paragraph "59" of the complaint.

60. In response to the allegations set forth in paragraph “60” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through “59” inclusive of this answer, as if fully set forth herein.

61. Deny the allegations set forth in paragraph "61" of the complaint.

62. Deny the allegations set forth in paragraph "62" of the complaint.

63. In response to the allegations set forth in paragraph “63” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through “62” inclusive of this answer, as if fully set forth herein.

64. Deny the allegations set forth in paragraph "64" of the complaint.

65. Deny the allegations set forth in paragraph "65" of the complaint.

66. Deny the allegations set forth in paragraph "66" of the complaint.

67. In response to the allegations set forth in paragraph “67” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through “66” inclusive of this answer, as if fully set forth herein.

68. Deny the allegations set forth in paragraph "68" of the complaint.

69. Deny the allegations set forth in paragraph "69" of the complaint.

70. Deny the allegations set forth in paragraph "70" of the complaint.

71. Deny the allegations set forth in paragraph "71" of the complaint.

72. Deny the allegations set forth in paragraph "72" of the complaint.

73. Deny the allegations set forth in paragraph "73" of the complaint.

74. Deny the allegations set forth in paragraph "74" of the complaint.

75. Deny the allegations set forth in paragraph "75" of the complaint.

76. Deny the allegations set forth in paragraph "76" of the complaint.

77. In response to the allegations set forth in paragraph “77” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through “76” inclusive of this answer, as if fully set forth herein.

78. Deny the allegations set forth in paragraph "78" of the complaint.

79. Deny the allegations set forth in paragraph "79" of the complaint.

80. In response to the allegations set forth in paragraph “80” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through “79” inclusive of this answer, as if fully set forth herein.

81. Deny the allegations set forth in paragraph "81" of the complaint.

82. Deny the allegations set forth in paragraph "82" of the complaint.

83. Deny the allegations set forth in paragraph "83" of the complaint.

84. Deny the allegations set forth in paragraph "84" of the complaint.

85. Deny the allegations set forth in paragraph "85" of the complaint.

86. In response to the allegations set forth in paragraph "86" of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through "85" inclusive of this answer, as if fully set forth herein.

87. Deny the allegations set forth in paragraph "87" of the complaint.

88. Deny the allegations set forth in paragraph "88" of the complaint.

89. Deny the allegations set forth in paragraph "89" of the complaint.

90. Deny the allegations set forth in paragraph "90" of the complaint.

91. Deny the allegations set forth in paragraph "91" of the complaint.

92. Deny the allegations set forth in paragraph "92" of the complaint.

93. Deny the allegations set forth in paragraph "93" of the complaint.

94. Deny the allegations set forth in paragraph "94" of the complaint.

95. Deny the allegations set forth in paragraph "95" of the complaint.

96. Deny the allegations set forth in paragraph "96" of the complaint.

97. Deny the allegations set forth in paragraph "97" of the complaint.

98. Deny the allegations set forth in paragraph "98" of the complaint.

99. Deny the allegations set forth in paragraph "99" of the complaint.

100. Deny the allegations set forth in paragraph "100" of the complaint.

101. Deny the allegations set forth in paragraph "101" of the complaint.

102. Deny the allegations set forth in paragraph "102" of the complaint.

103. Deny the allegations set forth in paragraph "103" of the complaint.

104. Deny the allegations set forth in paragraph "104" of the complaint.

105. Deny the allegations set forth in paragraph "105" of the complaint.
106. Deny the allegations set forth in paragraph "106" of the complaint.
107. Deny the allegations set forth in paragraph "107" of the complaint.
108. Deny the allegations set forth in paragraph "108" of the complaint.
109. Deny the allegations set forth in paragraph "109" of the complaint.
110. Deny the allegations set forth in paragraph "110" of the complaint.
111. Deny the allegations set forth in paragraph "111" of the complaint.
112. Deny the allegations set forth in paragraph "112" of the complaint.
113. Deny the allegations set forth in paragraph "113" of the complaint.
114. Deny the allegations set forth in paragraph "114" of the complaint.
115. Deny the allegations set forth in paragraph "115" of the complaint.
116. Deny the allegations set forth in paragraph "116" of the complaint.
117. Deny the allegations set forth in paragraph "117" of the complaint.
118. Deny the allegations set forth in paragraph "118" of the complaint.
119. Deny the allegations set forth in paragraph "119" of the complaint.
120. Deny the allegations set forth in paragraph "120" of the complaint.
121. Deny the allegations set forth in paragraph "121" of the complaint.
122. Deny the allegations set forth in paragraph "122" of the complaint.
123. Deny the allegations set forth in paragraph "123" of the complaint.
124. Deny the allegations set forth in paragraph "124" of the complaint.
125. Deny the allegations set forth in paragraph "125" of the complaint.
126. Deny the allegations set forth in paragraph "126" of the complaint.
127. Deny the allegations set forth in paragraph "127" of the complaint.

- 128. Deny the allegations set forth in paragraph "128" of the complaint.
- 129. Deny the allegations set forth in paragraph "129" of the complaint.
- 130. Deny the allegations set forth in paragraph "130" of the complaint.
- 131. Deny the allegations set forth in paragraph "131" of the complaint.
- 132. Deny the allegations set forth in paragraph "132" of the complaint.
- 133. Deny the allegations set forth in paragraph "133" of the complaint.
- 134. Deny the allegations set forth in paragraph "134" of the complaint.
- 135. Deny the allegations set forth in paragraph "135" of the complaint.
- 136. Deny the allegations set forth in paragraph "136" of the complaint.
- 137. Deny the allegations set forth in paragraph "137" of the complaint.
- 138. Deny the allegations set forth in paragraph "138" of the complaint.
- 139. Deny the allegations set forth in paragraph "139" of the complaint.
- 140. Deny the allegations set forth in paragraph "140" of the complaint.
- 141. Deny the allegations set forth in paragraph "141" of the complaint.
- 142. Deny the allegations set forth in paragraph "142" of the complaint.
- 143. Deny the allegations set forth in paragraph "143" of the complaint.
- 144. Deny the allegations set forth in paragraph "144" of the complaint.
- 145. Deny the allegations set forth in paragraph "145" of the complaint.
- 146. Deny the allegations set forth in paragraph "146" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

- 147. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

148. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

149. The individual defendant Horn has not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore is protected by qualified immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

150. At all times relevant to the acts alleged in the complaint, defendants acted reasonably in the proper and lawful exercise of their discretion and are entitled to state law good faith immunity.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

151. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct, or that of third parties, and was not the proximate result of any act of the defendants.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

152. Plaintiff has failed, in whole or in part, to comply with New York General Municipal Law § 50-e.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

153. Plaintiff cannot recover punitive damages from the municipal corporation defendants.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

154. Plaintiff's failure to mitigate his alleged damages operates as a complete or partial bar to suit and/or his recovery of damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

154. The individual defendants are entitled to qualified immunity.

WHEREFORE, defendants request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 27, 2008

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